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Citation for published version:

Lewis, D 2013, 'Slave marriages in the laws of Gortyn: a matter of rights?', *Historia: Zeitschrift für Alte Geschichte*, vol. 62, no. 4, pp. 390-416.

Link:

[Link to publication record in Edinburgh Research Explorer](#)

Document Version:

Peer reviewed version

Published In:

Historia: Zeitschrift für Alte Geschichte

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SLAVE MARRIAGES IN THE LAWS OF GORTYN: A MATTER OF RIGHTS?*

ABSTRACT: This article tackles the long-held view that slaves at Gortyn possessed legal privileges not found in most other Greek slave systems, namely formal, enforceable rights to marry and own property. Combining legal analysis with cross-cultural comparison, it is shown that the complex social arrangements within Gortyn's slave population engendered a variety of problems relating to the property interests of slaveholders. Gortyn's laws on slavery are thus primarily directed at clarifying these issues, not at validating or enforcing slave 'rights.' A comparative approach enables us to understand the rationale behind the complex 'slave marriage' arrangements that produced these legal quandaries.

Several provisions found within the laws of Gortyn¹ refer to arrangements whereby slaves might marry another slave or a free person, beget children, and possess property. These provisions have been frequently interpreted as evidence for 'rights' held by Gortynian slaves, making them quite different from the so-called 'chattel slaves' of Classical Athens. In a widely read essay, M.I. Finley wrote the following of Gortynian slaves:

[T]he unfree had certain proprietary or quasi-proprietary rights unknown in Athens and many other classical cities. With these (and perhaps even more important) went certain personal rights, above all, the right of marriage. The rules regarding adultery, divorce and relations between *douloi* and free women leave no doubt that it is proper to speak of marriage here, of a relationship which was more than a *contubernium*,

* Versions of this paper were delivered at Nottingham (February 2012) and Athens (September 2012). I would like to thank Kostas Vlassopoulos, Stephen Hodkinson and Athina Dimpoulou for the respective invitations, and the audiences for their stimulating questions, which have helped me to refine my thoughts. Peter Rhodes read a draft and I thank him for his advice. Special thanks are due to Edward Harris, who has read and commented on every draft of the essay; I should also like to thank the anonymous referees of the journal for their observations, and Emily West for advice on slavery in the Americas.

1 Translations of the Code are lightly adapted from R.F. Willetts, *The Law Code of Gortyn* (Berlin, 1967); other translations are my own unless otherwise specified. Throughout, I refer to IC IV 72 as 'the Code', purely for convenience. For the degree to which this term is strictly apposite, see J.K. Davies, 'Deconstructing Gortyn: When is a Code a Code?' in L. Foxhall & A.D.E. Lewis (edd.) *Greek Law in its Political Setting* (Oxford, 1996) 33–56; K.R. Kristensen, 'Codification, Tradition and Innovation in the Law Code of Gortyn' *Dike* 7 (2004) 135–68, at 136.

because it created certain enforceable rights, but which was at the same time far less than a marriage between free persons.²

Finley's assessment of these so-called marital and proprietary 'rights' has been largely accepted by modern scholars. The notion that Gortynian slaves could not merely marry and possess property, but had formal 'rights' in these respects has been endorsed in many studies³, including recent essays by scholars such as J.K. Davies⁴, K.R. Kristensen⁵ and M. Gagarin⁶; and Finley's belief that this kind of servile marriage was unusual outside Gortyn has been supported by scholars such as A. Maffi⁷ and E. Cantarella.⁸ This article demonstrates something quite different: first, that the provisions relating to servile marriages in the Great Code (IC IV 72) show no interest in enumerating rights for slaves whatsoever; and secondly, that the servile marriage relationship for which this legislation was created was not a distinctively Gortynian institution but a common arrangement that can be found in many slave systems, which in its complex forms engenders a variety of knotty legal problems relating chiefly to property. Whereas most scholarship on the Code has employed a traditional legal approach, this study, whilst utilising these tools, combines them with a comparative methodology to throw light upon these enigmatic provisions.

We begin, after introducing some basic features of the evidence and scholarship on the issue (part I), by looking at slave marriages and the possession of property by slaves in comparative perspective. This illustrates normative features of these phenomena in other historical slave systems and provides a benchmark against which to assess the alleged peculiarity of Gortyn (part II). Turning to the Gortynian texts, part III provides a

- 2 M.I. Finley, *Economy and Society in Ancient Greece*, B.D. Shaw & R.P. Saller (edd.) (London, 1981) at 137 (originally published as 'The Servile Statuses of Ancient Greece' *Revue internationale des droits de l'antiquité*, 3e sér., 7 [1960] 165–89).
- 3 For example, Willetts, (n. 1) 14–15; W.L. Westermann, *The Slave Systems of Greek and Roman Antiquity* (Philadelphia, 1955) 12; 16; 22–3; Y. Garlan, *Slavery in Ancient Greece* (Ithaca NY & London, 1988) 100; E. Lévy, 'Libres et non-libres dans le Code de Gortyne' in Brulé, P. & J. Oulhen (edd.) *Esclavage, guerre, économie en Grèce ancienne: Hommages à Yvon Garlan* (Rennes, 1997) 25–41 at 35; C. Brixhe–M. Bile, 'La circulation des biens dans les Lois de Gortyne' in Dobias-Lalou, C. (ed.) *Des dialectes grecs aux lois de Gortyne* (Nancy, 1999) 75–116 at 97; P. Perlman, Tinker, Tailor, Soldier, Sailor: The Economies of Archaic Eleutherna, Crete' *Classical Antiquity* 23.1 (2004) 95–137 at 110–11. S. Link, *Das griechische Kreta* (Stuttgart, 1994) 30–48 contains a variety of compelling criticisms of the notion of servile rights in Gortyn; this study builds upon his observations, but differs in a number of respects.
- 4 J.K. Davies, 'The Gortyn Laws' in M. Gagarin & D. Cohen (edd.) *The Cambridge Companion to Ancient Greek Law* (Cambridge, 2005) 305–27 at 316–7.
- 5 K.R. Kristensen, 'Gortynian Debt Bondage. Some New Considerations on IC IV 41 IV–VII, 47 and 72 I.56–II.2, X.25–32' *ZPE* 149 (2004) 73–9 at 79.
- 6 M. Gagarin, 'Serfs and Slaves at Gortyn' *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 127 (2010) 14–31.
- 7 A. Maffi, *Il diritto di famiglia nel Codice di Gortina* (Milan, 1997) 121.
- 8 E. Cantarella, 'Greek law and the family' in B. Rawson (ed.) *A Companion to Families in the Greek and Roman Worlds* (Malden MA, 2011) 331–45 at 342–3.

legal analysis which shows that it is mistaken to speak of ‘rights’ for slaves in Gortyn; what we are dealing with are rules concerned with property which sometimes need to take into account complexities generated by the existence of slave unions or the *de facto* possessions of slaves. Part IV explains the rationale for the existence of slave unions from the point of view of the slaveowner, showing that we need not account for these relationships by postulating a benign attitude toward slaves by their masters. Like any other slave system, however, Gortyn’s involved a dynamic relationship between masters and slaves; part V argues that some of the legal rules are evidence for the need to accommodate the will of slaves to establish unions of their own choosing. Part VI sets the Gortynian rules in a broader context, and raises the likelihood that similar practices existed elsewhere in the Greek world.

I. Introduction

Some preliminary remarks are necessary before we scrutinise the relevant provisions in detail. First, we must briefly deal with a matter of terminology. Two terms are used for slaves in the Gortyn Code: *dolos* and *woikeus*. This has confounded many scholars, since (rationally speaking) modern legal thinking demands terminological consistency. Some have thought that the two terms denote two different statuses: *dolos* denoting a ‘chattel’ slave of the sort found in Athens; *woikeus*, a helot-style ‘serf.’⁹ This simply does not work, for two reasons. First, it has long been recognised that these words are synonymous and interchangeable in terms of their usage in the Code. If we suppose that they refer to different statuses, various intractable problems arise.¹⁰ Besides, there is a good reason why two synonymous terms for ‘slave’ might appear in a single legal code. The Great Code did not spring into existence *ex nihilo* but compiled, redacted and organised many earlier rules that had been enacted piecemeal over a period of many years.¹¹ Let us suppose the Gortynian terms *dolos* and *woikeus* were employed somewhat like *doulos* and *oiketês* in Attic, the two terms being synonyms for ‘slave’ and used in-

9 Finley was right when he wrote in 1960 that ‘serfs appear everywhere’ in the historiography of Greek slavery (see Finley [n. 2] at 142). The picture has not changed in the intervening fifty years, and the terminology of serfdom still has a powerful hold on modern scholars. For recent criticisms, see N. Luraghi, ‘Helotic Slavery Reconsidered’ in A. Powell & S. Hodkinson (edd.) *Sparta: Beyond the Mirage* (London, 2002) 229–50 at 228–33.

10 Here is not the place to rehearse these arguments. They were first set out by H. Lipsius, *Zum Recht von Gortyns. Abhandlungen der sächs. Gesellschaft der Wissenschaft, phil.-hist. Kl.* XXVII no. 11 (Leipzig, 1909) 397–9, and endorsed by Finley (n. 2) 135–7. The fullest argument for this view is S. Link, ‘Dolos und Woikeus im Recht von Gortyn’ *Dike* 4 (2001) 87–112. The legal unity of these terms has been endorsed by several scholars, e.g. Maffi (n. 7) 120–1; Kristensen (n. 5) 73, idem, (n. 1) 147 n. 24; Davies, (n. 4) 315–6. Kristensen’s excellent study of Gortynian debt-bondage (n. 5) demonstrates that legal status in Gortyn was less convoluted than has hitherto been recognised.

11 For the prehistory of the Code see Davies (n. 1); Kristensen (n. 1).

terchangeably in everyday life.¹² If some Gortynian rules employed *dolos* terminology, and others enacted at a different time used the term *woikeus*, any compilation of these individual rules (such as we have in the Great Code) would contain a mixture of both terms.¹³ Of course, the individuals who erected the Code could have smoothed-out the irregularities in language and stuck to a single standardised term. But we must remember that these were not modern legal draftsmen obsessed with terminological consistency. If it were perfectly evident to a Gortynian reader that *dolos* and *woikeus* meant the same thing (as an Athenian would conclude about any document blending the terminology of *doulos* and *oiketês*, e.g. Thuc. 3.73; Dem. 49.55–7; cf. [Xen.] *Ath. Pol.* 1.11; Lys. 7.16–17), there would have been no reason to standardise the terminology in this way. Choosing to be conservative, the redactor(s) of IC IV 72 retained – warts and all – the language of the earlier individual enactments, producing an inelegant but workable collection of rules.¹⁴ This explanation is preferable to supposing that *dolos* and *woikeus* are terms referring to different groups that at some point underwent some manner of legal coalescence, so that the rules for one could be applied to the other and *vice versa*.¹⁵

The second problem relates to the issue of helotic slavery in the Greek world. In the fourth century BCE, Plato and Aristotle drew attention to several slave systems that lay outside the norm. The most notable examples were the helots of Laconia and Mesenia, the slave populations of Crete, the Thessalian Penestai, and the Mariandynoi of Heraclea Pontica (Pl. *Leg.* 776c–d; Arist. *Pol.* 1264a32–6, 1269a37–b5, 1271b40–72a2, Arist. *Fr.* 586 [Rose]). In no instance do these classical writers mention a basic status difference between helotic slaves and slaves from other parts of the Greek world. In fact, their single criterion for grouping these systems together is the ethnic homogeneity of the slave populations, which according to Plato rendered them more liable to revolt (Pl. *Leg.* 777b–d). Modern scholars have largely ignored the fact that these writers described the helots and other helotic groups as slaves, and instead have latched on to the dubi-

12 Gagarin (n. 6) 22–3 seems to think (following *LSJ*) that *oiketês* means ‘domestic’ or ‘household’ slave, but this is incorrect: it is a general term for slaves (cf. its usage in Thuc. 8.40.2; Hyp. 3.22; see also K. Harper, *Slavery in the Late Roman World, AD 275–425* [Cambridge, 2011] 513–8). That the two terms both refer to the same status does not rule out the possibility that they have different nuances, semantically speaking.

13 Cf. Kristensen (n. 1) 147.

14 Besides, the Attic orators refer to Athenian laws of slavery using different terminology: *doulos* (Aeschin. 1.15, 1.138, 1.139), *oiketês* (Hyp. 3.22; Dem. 47.72), *andrapodon* (Hyp. 3.15); it is entirely possible that the orators are mirroring the language of the inscribed enactments and that the Attic law code consolidated in the late fifth century utilised multiple terms for ‘slave’ as well. Given our knowledge of Athenian society, it is obvious that *doulos*, *oiketês* and *andrapodon* are all terms that can be used for the same status; but we utterly lack this sort of knowledge for Gortynian society. Were the tables turned in terms of the nature of our evidence, we might well be debating the existence of different ‘servile statuses’ in Attica on the basis of terminology.

15 This is a possibility suggested in a masterly essay by J.K. Davies, ‘Gortyn Within the Economy of Archaic and Classical Crete’ in E. Greco & M. Lombardo (edd.) *La grande iscrizione di Gortyna* (Athens, 2005) 153–74 at 161; the idea is greatly expanded by Gagarin (n. 6). The extrapolation of this theory by the latter scholar produces a very convoluted picture of Gortynian slave law.

ous categorisation of these groups as lying ‘between free men and slaves’ by a scholar of the 2nd century CE. By shifting the focus from ethnic and organisational differences to a putative difference in legal status, modern scholarship has thus re-categorized the helots and, by extension, other helotic populations, removing them from mainstream discourse on slavery. The most common category to which these groups have been re-assigned is serfdom, a status wherein individuals were bound to a certain plot of land and forced to render tribute or labour services to the landowner.¹⁶ For the historian of Crete, it is crucial to understand whether the categorisation of the helots as serfs is legitimate, since extrapolation from Sparta to Crete sets the general parameters for any detailed discussion on Cretan servile status.

There are three possible scenarios whereby helots might have been bound to a single *klaros* in a fashion analogous to serfdom. First, if the helot population was publicly owned and shared out among the citizens to hold in usufruct, these helots would have been inalienable from the point of view of the private citizen. Belonging to the state, they would not have been the private citizens’ property to sell, and to all intents and purposes, this would have bound the helot to an individual’s *klaros*.¹⁷ The second possibility would be that the helots were privately owned but that some form of public restriction banned either their alienation altogether or at least their alienation separate from plots of land, which would have had much the same effect. The third is that the helots found themselves in a position legally analogous to serfs, i. e. that neither state, nor institution, nor individual, exercised the rights of ownership over them, but that they were held in bondage through other legal means (namely the rendering of tribute or labour services paired with restriction of movement). Were any of these scenarios true, we might be forgiven for using the terminology of serfdom to describe helotic forms of slavery.

There are insurmountable problems with all three scenarios. The idea that helots were public property is a late development of the Hellenistic period and Sparta’s revolution;¹⁸ during the Classical period it is clear that they were private property.¹⁹ A law of Sparta banned sale of helots ‘beyond the borders’, but this *ipso facto* demonstrates that helots could be bought and sold inside Spartan territory.²⁰ Similar rules are known for the Pe-

16 G.E.M. de Ste. Croix, *The Class Struggle in the Ancient Greek World* (London, 1981) 147–55 provides the best discussion of the category.

17 This is the view of P.A. Cartledge, *Sparta and Lakonia: A Regional History, 1300–362 BC* (London, 1979) 164–5; ‘Serfdom in Classical Greece’ in L. Archer (ed.) *Slavery and Other Forms of Unfree Labour* (London, 1988) 33–41; ‘Raising Hell? The Helot Mirage – a personal re-view’ in N. Luraghi & S. Alcock (edd.) *Helots and their Masters in Laconia and Messenia: Histories, Ideologies, Structures* (Cambridge MA & London, 2003) 12–30, who holds that the helots were ‘state serfs’, an idea developed by de Ste. Croix (n. 16).

18 We find this notion in the late accounts of Strabo (8.5.4) and Pausanias (3.20.6).

19 See J. Ducat, *Les Hilotes*. BCH Suppl. 20 (Athens, 1990) 19–29; Luraghi (n. 9) 228–33.

20 The key passage is Ephorus *FGrH* 70 F 117: the ancestors of the helots ‘*κρηθῆναι δούλους ἐπὶ τακτοῖς τισιν ὥστε τὸν ἔχοντα μὴτ’ ἐλευθεροῦν ἐξεῖναι μῆτε πωλεῖν ἔξω τῶν ὁρῶν τούτους.*’ As Luraghi (n. 9) 228–9 rightly notes, ‘only preconceived ideas about helotry can explain how some

nestai of Thessaly and the Mariandynoi of Heraclea Pontica.²¹ In other words, helotage was a system of private slavery; one cannot simply assert that helotage was a form of serfdom and then extrapolate this model to other helotic systems such as those found on Crete. There is no evidence that Greek systems of servitude during the Archaic and Classical periods ever involved individuals being legally bound to a specific plot of land, or of slaves being inalienable²², and only by extrapolating imaginary rules about slaves being ‘bound to the soil’ can we suppose that anything of this sort ever existed in Crete.²³ On the contrary, the Gortynian laws make it clear that slaves could be privately sold.²⁴

It is therefore a mistake to categorise the helots – and by extension, other helotic groups – as serfs. It is also a mistake to view helotic slavery as a rigid category reduplicating the Spartan model. Plato and Aristotle did not envisage these systems in such a manner, only loosely grouping them together; and as Aristotle noted, very different conditions pertained for the slave populations of Crete and Sparta (*Pol.* 1269a37–b5,

scholars have been able to interpret this clause as if it meant that it was forbidden to sell helots altogether. A quick look at the text shows that, in order to convey that meaning, it would have been enough to conclude the sentence with *πωλεῖν*, without mentioning the borders.’

- 21 S. Hodkinson, *Property and Wealth in Classical Sparta* (London, 2000) 118–19 has found Ephorus’ statement inconclusive; he doubts the explicit ban on selling Mariandynoi beyond the national frontiers (Poseidonios *FGrHist* 87 F 8) as an appropriate parallel, and believes that little factual information can be derived from the latter passage due to its preoccupation with an obviously apocryphal ‘contract of servitude.’ It makes more sense, however, to view the ‘contract’ as an aetiological tale to explain an historical ban on external sale; precisely the same thing can be seen in relation to the Penestai in Archemachos *FGrHist* 424 F 1. Slaves in some helotic systems could not, therefore, be sold abroad; but this is profoundly different from them being legally bound to a specific plot of land; they could potentially be dispersed throughout Messenia and Lakonia, Thessaly and the Heracleian *chora* respectively, none of these regions inconsiderable in extent.
- 22 It is hard to imagine a rationale as to why slaves might ever have been altogether inalienable in any Greek society; it is certainly not the case that such a scenario could be an ossified relic of early Greek history, for slaves are freely alienable in Homeric epic (see E.M. Harris, ‘Omero, Esiodo e le “origini” della schiavitù greca’ in Di Nardo, A. & G.A. Lucchetta (edd.) *Nuove e antiche schiavitù* [Pescara 2012] 32–52). The notion of inalienability, it seems to me, is a by-product of the classification of helotic slavery in terms of serfdom.
- 23 Gagarin (n. 6) 25–6 suggests that *woikeis* were ‘attached to the land’ but provides no evidence to corroborate this claim. He then rightly notes that the evidence points to *woikeis* being alienable (see the next note), but tries to interpret this in the context of land sales. Cf. R.F. Willetts, *Aristocratic Society in Ancient Crete* (London, 1955) 47.
- 24 IC IV 72 VII 10–15 relates that *doloi* are sold in the agora. IC IV 41 IV 5–17 places a ban on selling a *woikeus* who has run away from his owner and taken shelter in a temple. This is obviously not a general interdiction on selling *woikeis* but is designed to protect the property interests of the master of the runaway slave, i.e. by preventing anyone at hand from profiting by selling another person’s ‘lost property.’ If *woikeis* were generally inalienable, then there would have been no need to create this rule; rather, the rule implies that *woikeis* were normally able to be sold (Cf. Link [n. 3] 33–4; Davies [n. 4] 316). This is mirrored by similar legislation in IC IV 72 I 39–55, where the concern seems to lie with protecting and recovering private property (i.e. slaves). I should state that none of this necessarily implies that slaves were sold frequently, only that the option existed for owners (cf. Luraghi [n. 9] 233).

1272b17–20). The only quality that made helots similar to Cretan slaves or Thessalian Penestai was that in all three regions the slaves spoke a single tongue.²⁵ Beyond that single unifying criterion, we should expect considerable diversity: not only was Cretan slavery different from Spartan helotage; we should expect considerable diversity *within* Crete itself. Gortyn represents one of over sixty classical Cretan *poleis*, and recent work has emphasised that beyond several widely shared institutions, Cretan *poleis* were structurally quite diverse.²⁶ A patchwork of slave populations stretched across the island, and the Gortynian laws provide us valuable insights into one such group. For the purposes of this study, then, we shall follow the now well-established position that in Gortynian law, *dolos* and *woikeus* equate to the same status, namely slave status, and avoid the problematic connotations that inevitably arise once one begins to use the terminology of serfdom.²⁷

II. Slave Marriages: A Comparative Perspective

Why, then, do modern scholars often agree that in Gortyn, slaves enjoyed special rights²⁸ to marry and own property? This is in part due to terminology, in part due to ambiguity in the language of the Code, and in part due to the fact that the relationships envisaged in the Code (servile marriages between slaves of different owners, and between slaves

25 See N. Luraghi, 'The Helots: comparative approaches, ancient and modern' in S. Hodkinson (ed.) *Sparta: Comparative Approaches* (Swansea, 2009) 261–304 at 265.

26 See P. Perlman, 'One Hundred-City Crete and the "Cretan Politeia"' *Classical Philology* 87 (1992) 193–205, but this should be read with the qualifications of A. Chaniotis, 'The Great Inscription, Its Political and Social Institutions and the Common Institutions of the Cretans' in E. Greco & M. Lombardo (edd.) *La grande iscrizione di Gortyna* (Athens, 2005) 175–94.

27 It is common to view Gortynian slavery as a hybrid of helotic slavery and *esclavage marchandise*. This is a mistaken assumption; first, as we have seen, *dolos* and *woikeus* mean the same thing; the terms do not represent groups of 'chattel slaves' and 'serfs.' Secondly, it is not the case that one was 'bound to the soil' and the other alienable; even were we to believe that *doloi* and *woikeis* were different groups, both could have been sold (cf. n. 24). Thirdly, alienability of slaves is a feature of helotic slavery as well as *esclavage marchandise*, and need not imply links to overseas markets.

28 I should clarify what I mean by rights. Some scholars claim that the Greeks had no concept of rights, but this is erroneous – see M.H. Hansen, 'The ancient Athenian and the modern liberal view of liberty as a democratic ideal' in J. Ober & C. Hendrick (edd.) *Dēmokratia: A Conversation on Democracies, Ancient and Modern* (Princeton, 1996) 91–104, who shows that in Athens the concept of rights was implicitly recognised. See also D. Cohen, 'Democracy and individual rights in Athens' *Zeitschrift der Savigny Stiftung für Rechtsgeschichte, Romanistische Abteilung* 114 (1997) 27–44. For the Gortynian case, the scholars cited in notes 3–6 above sometimes seem to treat the idea of slave 'rights' as a privilege that could be enforced against an unwilling master. A 'right to marry' thus amounts to the privilege of choosing a spouse without requiring the permission of one's own or one's would-be spouse's owner; a 'right to own property' amounts to the capacity to own property that cannot be confiscated by one's owner. At other times, these authors use the term 'rights' ambiguously; implicit, though, is the assumption that slaves could seek legal redress for infringement of their privileges.

and free persons) are difficult to parallel elsewhere in Greece, and thus seem – if not unique – at least highly peculiar. Categorisation in terms of serfdom has also contributed to this notion. Let us look at each in turn.

1. Terminology. The words used to describe servile marriage in the Code are *opuien* for men and the middle *opuiesthai* for women (IC IV 72 III 54–5; IV 4, 19; VII 1). These are precisely the same words used to denote the normal marriage relationship between free persons (for example, IC IV 72 III 19–20; VII 16, 20–1, 23, 26, 30, 35, 43, 46, 47, 52, 54). Some scholars believe that the identical vocabulary reflects a more-or-less identical legal arrangement.²⁹

2. The Code is often a puzzling text. It was written for readers with a great deal of contextual knowledge about Gortynian society, not for modern scholars, who, as outsiders to this legal culture, lack any of the basic contextual knowledge that those responsible for the erection of the inscription assumed readers would possess.³⁰ What seems to us like a terse and unnecessarily opaque statement in the Code probably made perfect sense to a Gortynian. Lacking this insider knowledge, some statements can bear multiple possible interpretations in the eyes of the modern scholar. *Prima facie*, several statements in the Code look like evidence for slave rights, such as the apparent right of slaves to hold on to property during the division of an inheritance (IC IV 72 IV 31–43), or the apparent right of a slave woman to take away personal property in the event of a divorce (IC IV 72 III 40–4). But we must remember that there is a great deal of contextual information not committed to stone in Gortyn's laws, and what seems at first glance unambiguous may upon closer inspection depend upon contextual information that is now lost. There are better ways of explaining these aforementioned provisions, as we shall see.

3. The fact that the Code refers to marriages between slaves of two different owners (IC IV 72 III 52–IV 8) or between slaves and free persons (IC IV 72 VI 56–VII 10) is downright peculiar, and hard to parallel elsewhere in Greece, where the better known pieces of our (albeit slender) body of sources refer only to unions between slaves of the same owner. Understandably, some scholars have thought the Gortynian arrangements to be unique to that community.³¹

29 H. Van Effenterre & F. Ruzé, *Nomima. Recueil d'inscriptions politiques et juridiques de l'archaïsme Grec. II* (Rome, 1995) 130; Lévy (n. 3) 39–40; Gagarin (n. 6) 23; Cantarella (n. 8) 342–3 'this rule (to our knowledge the only one of its kind in the ancient world) certainly alludes to a marriage, and not a *de facto* union: the verb used is *opuein*, the same verb used for marriage between free persons' (...) '[t]he Gortyn code also regulated the sexual relations between slaves owned by different masters, and subsumed them in the legal institute of marriage (as the use of the verb *opuein* also in this case seems to demonstrate).'

30 Chaniotis (n. 26) 178 perceptively writes '[t]he Law Code does not define any of the social, economic, legal and political institutions, for which norms are introduced, modified, or just written down; it *presupposes* the understanding of all these institutions, and this is why the interpretation of terms and clauses is still a matter of controversy.'

31 Maffi (n. 7) 122 n. 106 sees the Gortynian laws as rather unusual compared to other *poleis*; see also Cantarella (n. 8) 343, who is struck by the 'absolute originality of these provisions.'

4. The very fact that scholars have long thought of helotic systems in terms of serfdom has fostered the idea that these systems differed fundamentally in terms of legal status from the standard (Attic) model of slavery. Comparisons with serfdom may, if conducted carefully, prove illuminating,³² but in a legal sense this terminology is very misleading. Once one labels a population as 'serfs', one starts to look for special legal rights that placed this population in a better position than slaves. The argument is essentially based on a false premise: if helots were serfs, and serfs have rights, then helots (and other helotic populations) must have had rights as well. The act of categorisation pre-emptively supplies these populations with rights, prejudicing the historian's reading of the evidence so that he or she will look for rights, and interpret certain arrangements in such a fashion to fit neatly into the prefabricated 'box' of serfdom.

Scholars often loosely refer to these 'rights' without specifically stating what they might amount to. Yet it does not require much thought to imagine the myriad problems that might arise if we assume that Gortynian slaves possessed such putative rights. Could they use such rights to thwart the designs of their masters? For example, we have seen that in Gortyn, slaves were an alienable commodity.³³ Could a slave appeal to his right to remain with his slave wife in a formal marriage as a way of preventing his master from selling him? And what do we mean by claiming that a Gortynian slave had a right to marry? Could a slave form a marital relationship in spite of the objections of his owner? Or could a slave be at the same time the property of his owner and yet possess rights to own his own property that could not be interfered with by his master? If this is so, what happened to the slave's property when he was sold? Furthermore, if we assume that slaves had marital and proprietary rights in Gortyn, the internal evidence of the Code becomes strangely inconsistent. Parts of the Code make it clear that masters could sell their slaves and that the children of two slaves always belonged to a master, not to the slaves themselves. This does not dovetail comfortably with the view that, whilst remaining under his power, a slave could resist his master in various formal ways by appealing to his so-called 'rights.' And does such a permissive picture of slavery fit with what we know of the militaristic character of Gortynian society?³⁴ Such hypothetical scenarios seem instinctively problematic and beg for a more rational explanation.³⁵

What is needed is a reconsideration of these texts in the light of a comparative overview of servile unions, taking into consideration both ancient and modern exempla. If one examines the evidence against such a backdrop, it will be possible to determine whether the servile unions described therein were historically unusual, or instead resem-

32 A salutatory example is S. Hodkinson, 'Spartiates, helots and the direction of the agrarian economy: toward an understanding of Helotage in comparative perspective' in E. Dal Lago & C. Katsari (edd.) *Slave Systems, Ancient and Modern* (Cambridge, 2008) 285–320.

33 See note 24 above.

34 See H.-J. Gehrke, 'Gewalt und Gesetz. Die soziale und politische Ordnung Kretas in der archaischen und klassischen Zeit' *Klio* 79 (1997) 23–68.

35 See the perceptive comments on Gortyn by O. Patterson, *Slavery and Social Death* (Cambridge MA, 1982) 185 and p. 426 n. 49.

bled those of other places and periods in their fundamental legal features. Three points in particular need to be made at the outset, which will arm us against hasty assumptions when we read Gortyn's rules dealing with slave unions.

A. The first point relates to property. In many slave systems, slaves have been able to possess and manage property, run their own businesses, create contracts, and accumulate wealth. At first glance, slaves in such situations seem to use and dispose of property in the same manner as free persons. However, a closer look at the legal background to these practices reveals that the slave's owner has generally granted the slave this latitude as a *de facto* concession; legal title to the property held by the slave, however, always rests with the slave's owner.³⁶ A few examples should suffice to illustrate this relationship. The most familiar is *peculium* in Roman law, in which a slave was able to manage a fund, run his own business, and establish contracts, but *dominium* over this property remained in the hands of the slaveholder.³⁷ A very similar situation prevailed in Classical Attica. Good evidence for this can be found in an inscription listing the confiscated goods of Adeimantus, who was accused of vandalising the herms in 415 BCE. Among the goods of this individual are listed several slaves, among them a leather worker named Aristarchus (*IG* i³ 426.14). A few lines later, we find a list of property which had 'belonged' to Aristarchus included among the confiscated goods of his owner (*IG* i³ 426.24–39). Evidently, this slave had been living apart from Adeimantus and more-or-less running his own affairs, but the property he possessed legally belonged to his master and was confiscated alongside Aristarchus himself when Adeimantus was condemned (Cf. *Hyp. Ath. passim*). This was not a practice restricted to the 'classical' slave systems of Greece and Rome. If we peer into the heart of the Persian Empire during the same historical period, we may observe the very same thing, that is, slaves 'working on their own time', paying a rent to their Babylonian masters, but whose possessions belonged to their owners and were granted *de facto* but not held *de iure*. Several of these slaves became wealthy and powerful, but it is clear that their masters enjoyed full legal rights over both them and their possessions.³⁸ The same legal relationship existed two thousand years later, when Frederick Douglass lived apart from his owner in the Baltimore shipyards and lamented his lack of legal rights to all of his earnings.³⁹ My basic point is that we should look very carefully at the Gortynian texts to establish whether the legal

36 For the concept of ownership in comparative perspective, see A.M. Honoré, 'Ownership' in A.G. Guest (ed.) *Oxford Essays in Jurisprudence* (Oxford 1961) 107–147. E.M. Harris, 'Response to G. Thür' in E.M. Harris & G. Thür (edd.) *Symposium 2007: Akten der Gesellschaft für griechische und hellenistische Rechtsgeschichte* (Vienna 2009) 189–202 shows that the Greeks had a clear concept of ownership that can be distinguished from possession. See also A. Kränzlein, *Eigentum und Besitz im griechischen Recht* (Berlin, 1963).

37 For *peculium*, see W.W. Buckland, (1908) *The Roman Law of Slavery* (Cambridge, 1908) 187–206.

38 For *peculium* in Babylonian law, see M.A. Dandamaev, *Slavery in Babylonia from Nabopolassar to Alexander the Great (626–331 BC)*. Revised edition. (Dekalb IL, 1984) 320–97.

39 See the *Narrative of the Life of Frederick Douglass* [1845] in H.L. Gates, *The Classic Slave Narratives* (New York, 1987) 414–5. For a broader comparative study of *peculium* see Patterson (n. 35) 182–6.

relationship between slaves and property was similar to the aforementioned examples, or whether they enjoyed formal rights of ownership.

B. The second point relates to marriage, and in particular to unions established outside the holdings of a single slaveowner. We have noted that in Gortyn slaves could marry the slaves of other owners or free persons. Are such concessions necessarily formal in legal terms, or historically unusual? The comparativist must answer ‘no’ on both counts. In the American South, many servile unions were established between slaves of different owners, and between slaves and free persons. For example, in the slave narrative of Mary Prince we learn that she was the child of slaves belonging to different owners; her father was owned by a certain Mr. Trimmingham, her mother by a Mr. Myners.⁴⁰ The slave Harriet Jacobs relates in her narrative how she fell in love with a free man and planned to marry him, but was prevented by her infatuated master.⁴¹ In the US South, such unions did not possess a legal character. One must, nonetheless, note the legal ramifications of these unions. Let us take as a paradigm case the circumstance of a master owning a male and a female slave, with both slaves forming a union; it is obvious that any children produced from that union would belong to the couple’s master, as would any property accumulated by the couple over which they have *de facto* possession. Such simple scenarios pose no legal complications. But let us imagine that a master owns a male slave who falls in love with the female slave of another owner. Provided that both masters consent to the establishment of the union, the couple can ‘marry.’ If they have a child, this raises a legal problem: to which slaveowner does the child belong? Or suppose that the couple accumulate possessions over time. If one of them dies or the union for some reason ends, who owns the property? Potentially, both slaveowners have a stake in the goods. Or consider a union between a free person and a slave. Not only does this raise the same problems over property as noted in a union between slaves of different owners, but it also poses a problem in terms of the status of children: do they obtain the status of the free parent, or the slave? Such problems

40 *The History of Mary Prince: A West Indian Slave* [1831], in Gates (n. 39) 249–321, at 253. For such arrangements, see E. West, *Chains of Love: Slave Couples in Antebellum South Carolina* (Urbana & Chicago, 2004). Scholars working on the Gortyn Code, perhaps unaware of such parallels, have postulated various unlikely scenarios whereby a slave woman would become the property of her spouse’s master or that some sort of loan could be worked out (see Willetts [n. 1] 15, cautiously followed by Gagarin [n. 6] 23 n. 28). This is all rather unnecessary; for the rationale and dynamics of out-of-household servile unions, see sections IV and V, below.

41 *Incidents in the Life of a Slave Girl* [1861], in Gates (n. 38) 437–668, at 481–7. For further examples, see E. West, “‘She is dissatisfied with her present condition’: requests for voluntary enslavement in the antebellum American south” *Slavery & Abolition* 28.3 (2007) 329–50 at 337–42. See also I. Berlin, *Slaves Without Masters. The Free Negro in the Antebellum South* (New York, 1971) 269. Scholars who believe in the special privileges of Cretan slaves (e.g. Willetts [n. 1] 15; Garland [n. 3] 100) sometimes appeal to Arist. *Pol.* 1264a: ἐκείνοι γὰρ τὰλλα ταῦτα τοῖς δούλοις ἐφέντες μόνον ἀφειρήκασι τὰ γυμνάσια καὶ τὴν ὅπλων κτήσιν. This is not as surprising as it may at first appear; the basic institutions of family, church, and so on were extended to slaves in the antebellum US, and nobody would consider this evidence for a mild and permissive form of slavery.

occur in many slave systems. A glance at ancient Near Eastern law may be helpful in illustrating some possible solutions.

One familiar example comes from the Hebrew Bible, Exodus 21:1–11, which describes a form of indenture which applied only to Hebrews and not to foreigners. The term of the Hebrew's service to his master was limited to six years (Ex. 21:2); he was therefore not a slave but an indentured servant. If, during his term of service, he married one of his master's slave women and had children, the children were to be the property of the master (Ex. 21:4). However, if he wished to remain with his 'wife' and children after his six-year term, he could choose to become the slave of his master by undergoing a special ceremony (Ex. 21:5–6). Here, a possible conflict of interest is elucidated: in a mixed-status marriage between a free (although indentured) man and a slave woman, what status are the children to have? The law clarifies the situation: they belong to the woman's master. Older laws in the cuneiform tradition⁴² show a similar concern to clarify possible ambiguities that might arise from servile unions, particularly with regard to slaves kept as concubines, who enjoy certain legal protections after bearing children to their masters.⁴³ A most revealing text for the purposes of comparison can be found in the laws of Hammurabi (LH 176a):

And if either a slave of the palace or a slave of a commoner marries a woman of the *awīlu*-class⁴⁴, and when he marries her she enters the house of the slave of the palace or of the slave of the commoner together with the dowry brought from her father's house, and subsequent to the time that they move in together they establish a household and accumulate possessions, after which either the slave of the palace or the slave of the commoner should go to his fate – the woman of the *awīlu*-class shall take her dowry; furthermore, they shall divide into two parts everything that her husband and she accumulated subsequent to the time that they moved in together, and the slave's owner shall take half and the woman of the *awīlu*-class shall take half for her children.⁴⁵

The lesson these examples provide is that one should not leap to the hasty conclusion that simply because a law code mentions marriages or property of slaves, it must be concerned

42 Translations and references to cuneiform law follow M. Roth, *Law Collections from Mesopotamia and Asia Minor* (Atlanta GA, 1995).

43 Here is not the place to consider these in detail, but the relevant texts are as follows: LU 4 & 5; LL 23a & 25; LH 119, 144, 146, 147, 170, 171, 175, 176a. Also compare LE 31 on the rape of a slave to IC IV 72 II 5–16.

44 The word *awīlu* denotes a free citizen: see the *Chicago Assyrian Dictionary*, s. v. *amīlu*, *awīlu* 3 ('free man.').

45 Beyond the evidence of Near Eastern 'law codes', the applicability of which to real cases is debated, we possess concrete case documents from the same period as the Gortyn Code which show both unions between slaves of different owners and between slaves and free persons. On these documents, see the invaluable discussion of Dandamaev (n. 38) 409–414. In particular, an Aramaic document from Elephantine dated 449 BCE gives extensive detail on the terms of a marriage between a free man and a slave woman, stipulating that children of the union will belong to the woman's owner. See B. Porten & H.Z. Szubin, 'The status of the handmaiden Tamet: a new interpretation of Kraeling 2 (TAD B3.3)' *Israel Law Review* 29 (1995) 43–64.

with validating or protecting slave ‘rights’ of marriage or ownership. The rules may well be aimed at clarifying the property rights of other interested parties. We will consider the rationale behind the establishment of these complex servile unions later in the essay.

C. The final point relates to the terminology of marriage. We have noted that the vocabulary of marriage in the Code is the same for slaves and free persons. Does this mean we are dealing with the same legal relationship? A glance cross-culturally suggests otherwise. For example, in America in 1849 a man named Joseph Coates attempted to separate two of his slaves who were ‘married’, Ednoull and Sally. As it happened, Ednoull was able to thwart his owner’s plans by threatening suicide, which would have deprived Coates of a valuable worker. What is clear is that despite being ‘married’ to Sally and referring to their relationship using the same vocabulary as his master would have used to refer to his marriage, Ednoull could not legally resist his master’s powers of ownership, and had to find other ways to keep his relationship with Sally intact.⁴⁶ In the ancient world, a similar use of language can be observed. In Rome, slave *contubernia* were regularly referred to using the vocabulary of free unions, with no alteration to their informal legal character.⁴⁷ The two Near Eastern examples just mentioned further illustrate this principle. The Hebrew of Exodus uses the verb לַעֲבֹד (*bā’al*) which simply means ‘marry’ and is used in non-servile contexts, although it is a rarer term for marriage than אָרָא (*’āraś*) ‘betroth.’ Likewise, the slave wife is referred to by the normal word for wife, אִשָּׁה (*iššāh*). The Akkadian text of Hammurabi’s laws employs the same verb (*aḥāzum*) for slave marriages as it does for marriages between free persons (cf. LH 176a with LH 148, 162, 163 &c). There is no *a priori* reason, therefore, to suppose that the identical use of vocabulary for free and slave marriages in Gortyn need imply legal equivalency.

Hebrew
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incorrectly

III. Gortynian Texts on Slave Unions

With these points in mind, we may now proceed to analyse the relevant portions of Gortyn’s legislation. I have assigned the letters A–E to five portions of the Code.

Text A: IC IV 72 III 52–IV 23

αἰ δὲ φοικέα τέ-
κοι κερεύονσα, ἐπελεῦσαι
τῷ πάσται τῷ ἀνδρός, ὃς ὅ-
πιε, ἀντὶ μαιτύρον δ[υ]ῶν.
αἰ δὲ κα μὲ δέκσεται, ἐπὶ τῷ
πάσται ἔμειν τὸ τέκνον τῷ τ-
ᾶς φοικέας. αἰ δὲ τῷ αὐτῷ αὐ-
τὴν ὀπυίοιτο πρὸ τῷ ἐνιαυτ-
ῷ, τὸ παιδίον ἐπὶ τῷ πάσται

and if a *woikea* should bear a child while
separated, (they) are to bring it to the owner
of the man who married her in the presence
of two witnesses.

And if he do not receive
it, the child shall be in the power
of the owner of the *woikea*; but if
she should marry the same man again
before the end of the year, the child shall

46 See W. Johnson, *Soul by Soul. Life Inside the Antebellum Slave Market* (Cambridge MA, 1999) 34–5.

47 See B. Rawson, ‘Concubinage and other *de facto* marriages’ *TAPhA* 104 (1974) 279–305.

ἔμεν τῷ τῷ φοικέος. κὸρκιό-
 τερον ἔμεν τὸν ἐπελεύσαν-
 τα καὶ τὸς μαίτυρανς. *vac.* γ-
 υνὰ κερεύονσ' αἱ ἀποβάλοι
 παιδίον πρὶν ἐπελεύσαι κατ.-
 ἂ τὰ ἐγγραμμένα, ἐλευθέρο μ-
 ἐν καταστασεὶ πεντέκοντα
 στατῆρανς, δόλο πέντε καὶ ρ-
 ίκατι, αἷ κα νικαθῇ. οἱ δὲ κα μ-
 ἐ 'ί[ε] τις 'τέγα ὅπυι ἐπελευσε-
 ἷ, ἔ αὐτὸν μὲ ὀρεῖ, αἱ {αι} ἀποθ-
 εῖε τὸ παιδίον, ἅπατον ἔμεν.
vac. αἱ κύσαιτο καὶ τέκοι φοικ-
 ἑὰ μὲ ὀπυιομένα, ἐπὶ τῷ τῷ
 πατρὸς πάσαι ἔμεν τὸ τ-
 ἑκνον· αἱ δ' ὁ πατὲρ μὲ δόοι, ἐ-
 πὶ τοῖς τὼν ἀδελπιὼν πάσ-
 ταις ἔμεν.

be in the power of the owner of the
woikeus, and the one who brought it
 and the witnesses shall have preference
 in the oath. If a separated woman
 should expose her child before
 presenting it as is written, if she is con-
 victed, she shall pay, for a free child, fifty
 staters, for a *dolos*, twenty-five. And if
 the man should have no house to which
 she shall bring it or she do not see him,
 there is to be no penalty if she should
 expose the child. If a *woikea* who is
 unmarried should conceive and bear, the
 child shall be in the power of the owner
 of her father; but in case the father
 should not be living, it shall be in the
 power of the owners of her brothers.

This text provides good evidence that slaves could form unions with the slaves of other owners, and employs the same terminology that we find used for free marriages. At first glance, this appears to show a significant concession to slaves, namely the right to marry slaves from other households. But does this text really deal in terms of rights? Nowhere is there a substantive rule granting slaves a right to marry whomsoever they wish, nor any procedure to maintain such a marriage in the face of opposition by their owner. In fact, most of the text is concerned with identifying which party is to gain ownership of the slave couple's child in a variety of scenarios. This conforms to the model outlined above, where a union between slaves belonging to different owners creates a potential ambiguity in terms of the ownership of children: does the child belong to the owner of the male slave, or the owner of the female slave? The Gortynian rules answer this query by showing that ownership of the child depends on the status of the marriage. If the marriage is dissolved when the child is born, the child is to be presented to the ex-husband's owner. If he does not want the child, then the woman's owner is next in line to gain rights over the child. However, if the marriage is re-established within a year, the child goes to the man's owner. If the child is born outside the slave marriage, then it goes to the owner of the female slave's father, or, if he is no longer living, to the owner of her brothers. We can draw two important conclusions from this text. First, the slave has no right to his or her child; the law is clear that in any of these scenarios the child will belong to a slaveholder. Secondly, the marriage is not entirely informal in legal terms, because the nature of the relationship between the couple affects the property rights of their owners. In the event of separation of the couple, or of the female slave falling pregnant in a casual relationship, her owner can potentially gain rights over the child, whereas in a normal marriage scenario the male slave's owner has first call when

it comes to taking possession of the child. This is interesting, but it certainly does not confer any ‘rights’ on the male or female slave. So far, the Gortynian material does not diverge from our cross-cultural model of the slave union outlined above. Our next text shows that slaves could also be married to free persons, and that if a male slave married a free woman and lived with her, their children were to be free and could inherit property.

Text B: IC IV 72 VI 56–VII 10

[----- αἱ κ' ὁ δόλος
ἐπὶ τὰν ἐλευθέρων ἐλθὼν ὀπιλεί,
ἐλεύθερ' ἔμεν τὰ τέκνα. αἱ δέ κ'
ἀ ἐλευθέρῳ ἐπὶ τὸν δόλον, δόλ' ἔμ-
εν τὰ τέκνα. *palmula* αἱ δέ κ' ἐς τὰς αὐτ-
ὰς ματρὸς ἐλεύθερα καὶ δόλα
τέκνα γένεται, ἧ κ' ἀποθάνει ἀ-
μάτερ, αἱ κ' ἔι κρέματα, τὸν ἐλε-
υθέρων ἔκεν. αἱ δ' ἐλευθέροι
μὲ ἐκσεῖεν, τὸν ἐπιβάλλον-
ταν ἀναίλειθαι.

(If the *dolos* goes to a free woman
and marries her, their children shall
be free; but if the free woman goes
to the *dolos*, their children shall
be *doloi*. And if free and *dolos*
children should be born of the
same mother, in a case where the
mother dies, if there is property, the
free children are to have it; but if
there should be no free children born of
her, the heirs are to take it over.

Once again, however, there is no mention of slaves having a right to marry whomsoever they choose; the law only envisages the possibility of a union between a free person and a slave, a scenario we have seen in other slave systems. The best explanation for this rule is that it clarifies the status of children to slaveholders, that is, whether or not they are to gain ownership of a child of a mixed-status union. If the slave ‘goes to’ (i. e. dwells with) the free woman, the children are to be free and thus beyond the reach of the owner. If the free woman moves in with the slave, the owner of the slave gains property rights over the children. The possibility is envisaged that the same woman might bear free and slave children, perhaps because the couple have changed residence or perhaps because the father has been manumitted. In either scenario, if there is property left to be inherited, the free children gain it, and by implication, the slave children gain nothing. This rule further conforms to our standard model of servile unions, and once again is concerned with clarifying the property rights of free persons, not slaves.

Our next text is crucial to the notion that slaves possessed proprietary rights in Gortyn; to the casual observer, it looks like a specific statement that slaves could own property and enforce their rights to it in court.

Text C: IC IV 72 III 40–44

αἱ κ-
α φοικέος φοικέα κριθεῖ δοῶ
ἐ ἀποθανόντος, τὰ γὰρ αὐτὰ-
ς ἔκεν· ἄλλο δ' αἱ τι πέροι, ἔνδ-
ικον ἔμεν.

If a *woikea* be separated from a *woikeus*
while he is alive or in case of his death, she is
to have her own property; but if she should
carry away anything else, that becomes a matter
for trial.

According to several scholars, this amounts to unambiguous evidence that slaves could own property in Gortyn.⁴⁸ But it is not necessary to read the rule this way. It makes best sense to understand this rule in the scenario of a union between slaves of different owners. The legal interests of these owners with regard to the jointly possessed property of the slave couple have become enmeshed, because the property has been accumulated over time and has become intermingled; when the union ends, the property must be fairly divided between the relevant parties (i. e. the slaveowners).⁴⁹ The process of division is modelled to a certain extent on Gortyn's rules for divorce between free persons (IC IV 72 II 45–III 16); but the function of this law seems to be comparable to the one mentioned above in Hammurabi's Code, i. e. to split the property between its legal (free) owners.⁵⁰ One might object that the sense of the Greek is unambiguous: the female slave is to have that which is hers. I quite agree. But I do not dispute what the Greek here *says*, but rather what it *means*. Again, we must remember that this text is meant to be read in a particular social context. Gortyn's rules are in no way garrulous; they seldom go into detail defining terms or giving long-winded, pedantic instructions of the sort that can be found in modern legal systems.⁵¹ If it were self-evident to a Gortynian that this rule should be read in the context of a union between slaves of different owners, then there would have been no need to state that it applied to this sort of union in so many words. Text A provides a most apposite parallel for this interpretation. This text does not state explicitly at the outset that the rule applies to marriages between slaves of different owners. Nevertheless, as the rules unfold it becomes clear that the couple must belong to different owners, and I would argue that text C must be read in the same fashion. Rather than any evidence for slave rights, this text is a good example of how peculiar a written rule may appear once the social context in which it was designed to be understood is lost.⁵²

48 E. g. Willetts (n. 1) 49; Gagarin (n. 6) 26 'there is no doubt that a *woikeus* could own property.' Gagarin does, however, limit this to moveable property. Cf. Davies (n. 4) 316.

49 Cf. Maffi (n. 7) 124 'Anche i beni che la schiava porta con sé restano di proprietà del suo padrone, e non si confondono con il patrimonio del padrone di suo marito.'

50 As convincingly demonstrated by Link (n. 3) 34–5 and endorsed by Maffi (n. 7) 124, who rightly observes '[n]on si vede quindi come si possa parlare di un diritto, se esso non è tutelabile giudiziariamente.' Cf. Link (n. 3) 39–40. Cf. Van Effenterre & Ruzé (n. 29) 114.

51 For a good demonstration of this, see E.M. Harris, 'What are the laws of Athens about? Substance and Procedure in Athenian Statutes' *DIKE* 12 (2011) 5–67 with appendix 4. The tedious detail of modern definitions is often not aimed at helping or informing individuals in how to act in a given scenario, but in removing possible avenues of litigious attack by creative lawyers. Needless to say, a similar rationale behind definitions cannot be posited for ancient Greek law, where definitions are used when meanings are not self-evident, or require precise wording, but are otherwise omitted (Harris, at 33–9).

52 The same principle must apply to fines. Several scholars have supposed that when the Code refers to the offences of slaves requiring fines, the slaves must pay them themselves from their own money or that slaves received fines for offences perpetrated against them (Davies [n. 4] 316; idem, [n. 15] 161; Gagarin [n. 6] 26). Admittedly, the Code is hardly probative on this point, merely stating the size of the fine. However, the provisions in IC IV 47 make it clear that the slave had no right to the

Text D is more enigmatic. Unlike the previous texts, it does not deal with a situation where the slave is in a complex marital situation, but with a single slave's possessions. It relates to a division of property after the head of a household has died:

Text D: IC IV 72 IV 23–43

τὸν πατέρα τῶν
τέκνων καὶ τῶν κρεμάτων κ-
αρτερόν ἔμεν τὰδ δαίσιος
καὶ τὰν ματέρα τῶν αὐ-
τῶν κρεμάτων. ἂς κα δόοντι,
μὲ ἐπάνανκον ἔμεν δατῆ-
θθαι· αἱ δέ τις ἀταθείε, ἀποδ-
άπταθθαι τοῖ ἀταμένοι ἄ-
ι ἔγγραπται. ἔ δέ κ' ἀποθάνει τις,
'τέγανς μὲν τὰνς ἐν πόλι κᾶ-
τι κ' ἐν ταῖς 'τέγαις ἐνέι αἰ-
ς κα μὲ φοικεὺς ἐν φοικεῖ ἐπ-
ὶ κόραι φοικίον καὶ τὰ πρόβατα κα-
ὶ καρταίποδα ἅ κα μὲ φοικέος ἔι,
ἐπὶ τοῖς υἰάσι ἔμεν, τὰ δ' ἄλ-
λα κρέματα πάντα δατῆθθα-
ι καλῶς, καὶ λανκάνεν τὸς μ-
ἐν υἱύνς, ὁπότετοι κ' ἴοντι, δύ-
ο μοίρανς φέκαστον, τὰδ δ-
ἐ θυγατέρανς, ὁπότετοι κ' ἴον-
τι, μίαν μοίραν φεκάσαν.

The father shall be in control of the children and the division of the property and the mother of her own property. So long as they are living there is no necessity to make a division; but if anyone should be fined, the one fined shall have his share apportioned to him as is written. And in case (the father) should die, the city houses and whatever there is in the houses in which a *woikeus* living in the country does not reside, and the cattle, small and large, which do not belong to a *woikeus*, shall belong to the sons; but all the rest of the property shall be fairly divided and the sons, no matter how many, shall each receive two parts, while the daughters, no matter how many, shall each receive one part.

According to Y. Garlan, this passage shows that Gortynian slaves 'could challenge any arbitrary moves by their master with their own rights of "possession" over the house in which they lived, their herds, and probably other goods of a similar kind.'⁵³ Many scholars have been struck by the fact that the house and cattle of a slave appear to lie outside the patrimony taken over by the sons, and have arrived at a similar conclusion to Garlan, namely that the slave must possess legal rights to defend his property against interference by his owner.⁵⁴ S. Link, however, has pointed out several intractable prob-

fine: see Kristensen (n. 5) 74. This is an important example of the Code stating things bluntly and relying upon the contextual knowledge of the Gortynian reader.

53 Garlan (n. 3) 100.

54 Willetts (n. 1) 14; Brixhe–Bile (n. 3) 96 describe the *woikeus*' rights as 'usufruit d'une maison, bétail, biens divers,' cf. p. 97 ('il a usufruit d'une maison, dont le mobilier n'est pas partagé lors de la mort du maître'). Lévy (n. 3) 35 claims '[l]e *woikeus*, qui a ainsi une personnalité juridique, peut aussi posséder des biens, dont n'héritent pas les héritiers de son maître.' Davies (n. 4) 316 writes '[t]he implication is that a *woikeus* who dwelt in the countryside (...) had first call on use, and presumably possession, of house and beasts.' R. Koerner, *Inchriftliche Gesetzestexte der frühen griechischen*

lems with this assumption. First of all, the wording of the law does not imply that the property held by *woikeis* cannot be inherited. Rather, it makes a distinction between two types of property in the patrimony: (1) property that can only be inherited by the sons; (2) property that can be inherited by both sons and daughters, shared out in a 2:1 ratio. In category (1) are the houses in town, and the contents of the houses apart from those occupied by a *woikeus*; and the cattle, apart from that possessed by the *woikeus*. Everything else belongs to category (2), which can be split among both male and female heirs. In other words, the law does not stipulate that the *woikeus* and his possessions cannot be inherited, only that they do not belong to this special category of property earmarked for the sons alone. By implication, the house in which a *woikeus* dwells, and the cattle he possesses all belong to the second category of property, which can be split among both male and female heirs.⁵⁵ Second, as Link points out, if the *woikeus* actually owned (rather than simply possessed) his property, it would have been superfluous to state that this could not be inherited – this would be perfectly self-evident.⁵⁶

What is the rationale lying behind this rule? There are two good reasons why the law seeks to create these separate categories of property in the patrimony. The first is that females can marry and thus move into a house with their husband, whereas males need a house of their own in which to live and raise a family.⁵⁷ Special care is therefore taken to guarantee via legislation that the sons will have somewhere appropriate to live. The second lies in the particular nature of Gortynian society. One common Cretan institution was the *andreion*, a common-mess for male citizens linked to the military life of the community.⁵⁸ As in Sparta, there was a specific need for adult male citizens to attend the mess on a regular basis, and this necessitated the sons having a house in the town in which to dwell. If a son's share of the patrimony included a country house but no dwelling in town, this could inhibit his ability to participate in the normal social and military life of the male citizenry. Read in this context, it is clear why the law takes special pains to guarantee that the sons will have a dwelling *in town* specifically.

What about the house in which a *woikeus* is living – why is it not included in category (1) of property? One plausible explanation is that this dwelling was not of the same standard as the town houses in which a free citizen would live, and thus could be exempted from category (1) and divided among both male and female heirs along

Polis, ed. K. Hallof (Cologne, Weimar & Vienna, 1993) 499 is uncertain which party (the *woikeus* or the heirs) has the stronger rights.

55 Link (n. 3) 34–5; Maffi (n. 7) 64–70 provides a useful analysis of this passage. Slaves as well as cattle seem to be implied as inheritable property in the word *τνατὼν* at IC IV 72 V 39 (Lévy [n. 3] 32; Brixhe–Bile [n. 3] 92). Willetts translates this as ‘livestock’ but it is better rendered as ‘mortal’ property (i.e. slaves and animals), as opposed to produce, clothing, and so on mentioned in lines 39–41. Lévy (n. 3) 32 n. 22 points out the opposite term *ἀθάνατα κρέματα* in IC IV 76 B 8–9.

56 Link (n. 3) 35.

57 Gagarin (n. 6) 20 has a not dissimilar view of the function of the law, but differs on the matter of the ‘rights’ of the slave. Cf. Maffi (n. 7) 69.

58 For the *andreion* as a pan-Cretan institution, see Chaniotis (n. 26) 184 with n. 40. Further discussion in relation to Gortyn in Davies (n. 15) 166–7.

with everything else.⁵⁹ In other words, the law aims to provide the sons with suitable dwellings in town, but not to apportion to the sons alone every last dwelling their father might have owned; it thus prevents the sons from claiming an unfair proportion of the patrimony. On this interpretation, the focus of the law is not on the rights of the *woikeus*, but on the need for sons to have town houses after the death of their father. The *woikeus* can clearly live in a dwelling and possess property, but there is no sign that this was a formal right which the *woikeus* could defend in court.

Our final text deals with the order of succession. It stipulates that property is to pass to lineal descendants, and if the line of descendants is exhausted, it is to pass to collateral relatives, with males taking precedence. In the unlikely scenario that a man dies without any descendants or relatives to inherit the property, it is to pass to ‘τᾶς φοικίας, οἵτινες κ’ ἴδοντι ὁ κλᾶρος’, that is, ‘those of the *woikia* (household) who are the *klaros*.’

Text E: IC IV 72 V 9–28

ἔ κ’ ἀποθάνει ἀνὲρ ἢ γυν-
 ἄ, αἱ μὲν κ’ εἰ τέκνα ἢ ἐς τέ-
 κνον τέκνα ἢ ἐς τούτον τέ-
 κνα, τούτος ἔκε[ν] τὰ κρέμα-
 τα. *palmula* αἱ δέ κα. μέτις εἰ τούτο-
 ν, ἀ{α}δελφιοὶ δὲ τῷ ἀποθανόν-
 τος κῆς ἀδε[λ]πιὼν τέκν-
 α ἢ ἐς τούτον τέκνα, τούτ-
 ος ἔκεν τὰ κρέματα. *palmula* αἱ δέ κα
 μέτις εἰ τούτον, ἀδευπιαὶ δ-
 ἔ τῷ ἀποθανόντος κῆς ταυτ-
 ᾶν τέκνα ἢ ἐς τὸν τέκνον τέ-
 κνα, τούτος ἔκεν τὰ κρέμα-
 τα. *palmula* αἱ δέ κα μέτις εἰ τούτον,
 οἷς κ’ ἐπιβάλλει ὅπο κ’ εἰ τὰ κρ-
 έματα, τούτος ἀναιλῆθθα-
 ι. *palmula* αἱ δὲ μὲ εἶεν ἐπιβάλλοντε-
 ς, τᾶς φοικίας οἵτινές κ’
 ἴοντι ὁ κλᾶρος, τούτους ἔ-
 κεν τὰ κρέματα.

when a man or a woman dies,
 if there be children or children’s
 children or children’s children’s
 children, they are to have the
 property. And if there be none of
 these, but brothers of the deceased
 and brothers’ children or brothers’
 children’s children, they are to have
 the property. And if there be
 none of these, but sisters of
 the deceased and sisters’ children
 or sisters’ children’s children,
 they are to have the property.
 And if there be none of these,
 they are to take it up, to whom
 it may fall as source of the property.
 And if there should be no kinsmen,
 those of the *woikia* who are
 the *klaros* are to have
 the property.

Some scholars have thought that ‘those of the *woikia* who are the *klaros*’ must refer to the slaves left behind, and that the rule gives slaves a place in the order of succession. These slaves, it is contended, would become free and divide the property between them.⁶⁰

59 Greek comparanda are not numerous, but cf. the dwelling of Eumaeus in which he entertains Odysseus at the beginning of book 14 of the *Odyssey*. In the US South, slave families often occupied small cabins that were not of the same standard as the houses of their owners.

60 Willetts (n. 1) 15; Gagarin (n. 6) 27–8.

Most scholars have opposed this conclusion. The text does not mention slaves, but rather ‘those of the *woikia* who are the *klaros*’, which would be a very roundabout way of referring to the slaves left behind, even by the elliptical standards of the Code. Given that slaves seem to be included as inheritable property in IC IV 72 V 39, and that they are unable to inherit property in IC IV 72 VI 56–VII 10, the possibility that they could take over their owner’s property in this fashion seems rather remote. This phrase has normally been interpreted as referring to neighbouring families that probably belonged to the same tribe as the family of the deceased, although it is difficult to be certain.⁶¹ Here again, our lack of contextual, extra-epigraphic knowledge about Gortynian society precludes confident answers to every last riddle contained in the legal texts.

Let us sum up this section. It is clear that in Gortyn, slaves were allowed to form unions, live with their partners, have children and possess property. These unions were not entirely informal, for the law apportioned slave children to different slaveowners depending on the status of the union. Beyond this, however, we may hunt in vain for special legal rights possessed by Gortyn’s slaves. The Code is perfectly capable of stating that a certain person possesses a certain right in a certain situation⁶², but this never seems to occur in relation to slaves. Much remains to be said about how these marriages may have functioned in practice, but from a legal point of view, Gortyn does not lie outside our cross-cultural paradigm of slave unions where sexual unions between slaves could be referred to using the vocabulary of free marriage and involve the accumulation of possessions by the slave spouses, without any sense of the slaves gaining legal rights. This conclusion, however, raises a further problem: why did Gortynian slaveowners allow their slaves to marry? Was it for benevolent reasons, or did it serve their material interests? And if so, were the slaves merely passive spectators to the managerial strategies of their owners?

IV. The Rationale Behind Slave Marriages: The Slaveowner’s Point of View

Two good reasons exist which help to explain why slaveowners in Gortyn were acting in their own interests in allowing their slaves to marry. The first is the use of marriage as an incentive towards good behaviour. In a recent study, Katsari and Dal Lago have

61 Finley (n. 2) 137; Brixhe–Bile (n. 3) 88; Kristensen (n. 1) 21; Chaniotis (n. 26) 183; Davies (n. 4) 320. Willetts (n. 1) 15 n. 93 believes that the property will go to the household ‘serfs’ and cites an interesting parallel from early-modern Greece, where following the exhaustion of the line of a Turkish notable the local peasants took over his property. Willetts’ point is entirely dependent upon viewing the status of the *woikeis* as somehow analogous to that of these Greek peasants. As we have seen above, however, *woikeis* are slaves in the full property sense, and thus legally very different from these peasants. His parallel, if anything, supports the interpretation of the scholars mentioned at the beginning of this note.

62 E. g. IC IV 72 II 33–6 (captors of a seducer who is not ransomed can deal with him as they wish); VI 5–7 (a son can sell or pledge his own items of property) VII 50–VIII 12 (various rights regarding choice of marriage partner for the heiress).

shown that the managerial strategies advocated by Roman agronomists in many ways resemble the system of 'Paternalism' well known from the American South.⁶³ In such a system slaves are motivated by a predictable array of incentives and sanctions imposed by their owner. Incentives might include better food and clothes, positions of responsibility and praise, or the capacity to form unions with other slaves, live in a family dwelling, and possess a plot on which to grow food for personal consumption or exchange. Sanctions might include whipping, starvation, sexual violence, sale, and a variety of other punitive measures. Slaveowners could point to the content of the incentive measures as evidence for their benevolent, 'paternalistic' attitude, but this obscures the fact that such concessions were rarely given altruistically, but form one half of a cynical and manipulative form of coercion. Leanne Hunnings has recently shown that slave management in the *Odyssey* contains all these ingredients.⁶⁴ Composed for a slaveholding elite, the *Odyssey* invariably shows this elite in a favourable light, focusing more on incentive-related behaviour than punitive measures.⁶⁵ Nevertheless, the slave Eumaeus can imagine being granted a house, a wife, and a plot of his own in return for loyal service (*Od.* 14.61–7; 21.213–16; cf. 24.383–90). Xenophon's *Oeconomicus*, dating several centuries after the Homeric poems, displays much the same approach. Among the various incentives Ischomachos recommends to Socrates as methods of motivating slaves, the opportunity to breed looms large (*Xen. Oec.* 9.5; cf. 13.6–10). If we apply the same rationale to Gortyn, it is obvious why allowing a slave to marry could serve a master's interests. Marriage did not only have anticipatory benefits for slaveholders; it provided retrospective advantages as well, in most cases adding to the slaveholder's wealth if children resulted from the union and granting the slaveholder further leverage over his slave's behaviour by the tacit threat posed to the welfare of the child and the unity of the slave family by the slaveholder's powers of ownership ([Arist]. *Oec.* 1.5.6).

There is a further reason why the encouragement of slave families makes sense from the point of view of the slaveholding classes. As we have seen, Gortyn formed one of a patchwork of Cretan slave systems that Aristotle rather reductively lumped together in his discussion of the so-called Cretan *Politeia* and compared to helotage. One characteristic of helotic slave systems is a high incidence of slavebreeding and a relative lack of augmentation of the slave supply from abroad. This fits well with our understanding of the Cretan economy which, if not as 'primitive' as was once thought, at least was not characterised by the high levels of foreign trade found in communities such as Athens,

63 E. Dal Lago & C. Katsari, 'Ideal models of slave management in the Roman world and the antebellum American south' in E. Dal Lago & C. Katsari (edd.) *Slave Systems Ancient and Modern* (Cambridge, 2008) 187–213.

64 L. Hunnings, 'The Paradigms of Execution: Managing Slave Death from Homer to Virginia' in R. Alston, E. Hall & L. Proffitt (edd.) *Reading Ancient Slavery* (London & New York, 2011) 51–71.

65 For Homeric slavery as an idealised abstraction of reality see W.G. Thalmann, *The Swineherd and the Bow. Representations of Class in the Odyssey* (Ithaca & London, 1998) 13–107.

and which would have been a prerequisite of any system of *esclavage marchandise*.⁶⁶ Research by American historians into the supply structure of US slavery has highlighted the key role of the slave family in the self-perpetuation of the slave population. Even before the closure of foreign slave supplies in 1808, 80 % of the slave population of the American South was ‘home grown’, and this proportion increased thereafter to 99 % by 1860.⁶⁷ This birth rate was not primarily due to ‘stud farms’ or rampant sexual exploitation of female slaves by their owners, but largely to the ubiquity of the slave family as a social institution.⁶⁸ In a helotic system of slavery, we must therefore expect the slave family to have been the social mechanism responsible for successfully reproducing the slave population, and the Gortynian servile family arrangements may well reflect this. In Sparta and elsewhere, certain rules preventing the sale of slaves abroad make best sense as a means of preventing the numerical erosion of slave populations that were essentially ‘home grown’ and were not greatly augmented by external supply.⁶⁹

V. The Role of the Slaves: A View from Below⁷⁰

Thus far, the rationale holds true. But why do we find arrangements in Gortyn whereby slaves might marry outside the *oikos* of their owner? In such arrangements, children of the union might in certain circumstances belong to another slaveholder or inherit free status. Such arrangements hardly appear desirable from a slaveholder’s point of view. The answer, I think, lies in those responsible for instigating the relationship in the first place. Apart from the occasional rare document,⁷¹ our body of knowledge on Greek

66 On the classical Cretan economy, see the studies in A. Chaniotis (ed.) *From Minoan Farmers to Roman Traders. Sidelights on the Economy of Ancient Crete* (Stuttgart, 1999); see also Perlman (n. 3); Davies (n. 15). B. Erickson, ‘Archaeology of Empire: Athens and Crete in the Fifth Century B.C.’ *AJA* 109.4 (2005) 619–63 makes a case for greater optimism regarding foreign contacts, but even in his revised picture Cretan foreign trade remains minimal and localised.

67 R.W. Fogel & S.L. Engerman, *Time on the Cross* (Boston & Toronto, 1974) 23.

68 Fogel & Engerman (n. 67) 78–86; 126–44.

69 Maffi (n. 7) 127 suggests the Gortynian slave family was a means of maintaining the servile population numerically. For the rules against selling helots abroad, see Ducat (n. 19) 23; Luraghi (n. 9) 229. I disagree with Maffi (n. 7) 120 n. 103 that the possibility of selling slaves at Gortyn implies links with the wider Aegean slave market; it is quite possible that most Gortynian slaves sold were home-born and there was minimal contact with foreign markets. The same probably goes for Sparta, where slaves could be sold, but not abroad, and slaves from abroad were rarely bought-in to supplement the helot population. There is no explicit evidence that Cretan slaves could *not* be sold abroad (like Sparta), but this may perhaps be implied by Strabo 12.3.4, although the sense is rather uncertain, and the source rather late.

70 For the necessity to study Greek slavery from multiple perspectives beyond the legal rights of slaveowners, see K. Vlassopoulos, ‘Two images of ancient slavery: the “living tool” and the “koinōnia”’ in E. Herrmann-Otto (ed.) *Sklaverei und Zwangsarbeit zwischen Akzeptanz und Widerstand* (Hildesheim, 2011) 467–77.

71 See E.M. Harris, *Democracy and the Rule of Law in Classical Athens* (Cambridge, 2006) 256–8.

slavery derives predominantly from the slaveholding classes. It is too easy to think of slaves as the passive instruments of their masters' wills; but more balanced evidence from other slaveholding cultures shows that this sort of interpretation is not at all credible. Greek slaves, like slaves in any other culture, interacted with people beyond the confines of their master's *oikos*, including other slaves, and liaisons must doubtless have ensued. That slaves pursued love-affairs and tried to gain their masters' assent to help in turning these into serious unions is explicitly envisaged in Menander's *Heros*. Here, a slave, Daos, bewails his love-life to his friend Getas, a slave who belongs to another owner (lines 15–20)⁷²:

- GETAS: What's that you say? Are you in love?
 DAOS: I'm in love.
 GETAS: Your master is allowing you more than
 Double rations. That's bad, Daos; you're probably over-eating.
 DAOS: I suffer in my heart when I see the girl;
 She was raised alongside me, she's innocent,
 She's of my station, Getas.
 GETAS: Is she a slave?
 DAOS: Yes – sort of – in a certain manner.

As the discussion proceeds, it becomes clear that although serving Daos' master and having been brought up in his household, the girl, Plangon, is not strictly a slave, but an indentured servant working-off her deceased father's debts alongside her brother.⁷³ When Getas asks what Daos has actually done to achieve his desires, Daos replies (lines 41–4):

- DAOS: Herakles! Not anything treacherous
 Or underhand. I've talked to my master
 And he promised he would speak
 To her brother and let her cohabit with me.

Fiction as this may be, and written by a member of the slaveowning classes rather than by a slave, the discussion envisaged between the two slaves nevertheless has a strong sense of verisimilitude (cf. Plaut. *Cas.* 68–78; *Mil.* 1007–9; Ter. *Ad.* 972–3). It is the sort of scenario that must have occurred in all Greek slave systems, albeit leaving little historical trace in our sources, and it is precisely what we find in cultures where extensive evidence has been preserved from the mouths of the slaves themselves, such as the antebellum US South. Slave marriages, I would contend, must often (and perhaps usually) have resulted from relationships initiated by the slaves themselves, not arranged

72 My translation is based on the text of F.H. Sandbach (ed.) *Menandri reliquiae selectae* (Oxford, 1972).

73 For the legal status of the girl, see Harris (n. 71) 249–69. Because she is not technically a slave, consent to establish the union must be gained from her brother, hence the restoration of τὸν ἀδελφόν at line 44.

by their owners; but the slaves must then have had to gain the consent of their masters to 'marry' their partner.

Comparative data as ever helps to refine our approach. In a valuable study of slave unions in 19th century South Carolina, Emily West has illustrated the continuous push-and-pull between slaveholders (who wished to control as many aspects of their slaves' lives as they could) and their slaves (who wished to find their own marriage partners and control their own family life as far as possible). Several conclusions of her study are apposite to our study of Gortyn. First, she has shown an almost universal disinclination on behalf of slaveholders towards the establishment of unions between slaves of different owners, what she calls 'cross-plantation' marriages.⁷⁴ Slaveholders overwhelmingly preferred unions established within their own holdings. Yet this contrasts starkly with the recorded frequency of cross-plantation marriages. West's sample of data from South Carolina revealed that a striking 35.5 % of slave unions were cross-plantation marriages between slaves belonging to different masters.⁷⁵ Slaveholders ultimately permitted such a high number of these unions because they recognised the need to grant certain concessions in order to keep their slaves motivated, increase the slave stock, and maintain the benevolent and patriarchal image they wished to project.⁷⁶ A further illuminating observation is the lack of passivity on behalf of the slaves, few of whom entered into marriages arranged by their owners, most opting to make the most of opportunities to find marriage partners for themselves. One ex-slave remarked:

A nigger had a hell of a time gittin' a wife durin' slavery. If you didn't see one on de place to suit you and chances was you didn't suit them, why what could you do? Couldn't spring up, grab a mule and ride to de next plantation widout a written pass. S'pose you gits your marster's consent to go? Look here, de gal's marster got to consent, de gal got to consent, de gal's daddy got to consent, de gal's mammy got to consent. It was a hell of a way.⁷⁷

Despite these difficulties, many slaves went to remarkable lengths to initiate romantic relationships with slaves belonging to other owners and ultimately marry them, as the statistics bear out, with more-or-less a third of slave marriages conforming to this type. It is impossible to discover any historical details of a comparable nature from Gortyn, but the institution of servile marriage referred to in the Code must have been shaped by both slaveholders and the slaves themselves. I see no reason to suppose that Gortynian slaveholders need have viewed out-of-household unions any more favourably than their American counterparts, and the fact that the Code envisages the legal problems engendered by such unions hints at the role of slaves themselves in establishing them. Nor can we rule out the possibility that these unions were potentially quite common. Since

74 West (n. 39) 50–5.

75 West (n. 39) 46; see also pp. 47–50.

76 West (n. 39) 51.

77 Andy Marion, quoted in West (n. 40) 30. Marion, it should be noted, lived on a plantation of seventy-two slaves. Evidently, slaves could be just as choosy about partners as anyone else.

Gortyn's slave system depended upon breeding rather than imports for the numerical perpetuation of the slave population, it seems reasonable to conjecture that greater latitude toward the establishment of slave unions probably existed in helotic systems than in *poleis* such as Athens, Corinth, Aegina and so on, where slaves could be imported cheaply and the rationale behind fostering the slave family as a social institution was not as strong.⁷⁸

VI. The Peculiarity of Gortynian Slave Marriages

This leaves us with one final problem: was Gortyn unique in the Greek world in permitting slave marriages beyond the confines of a single *oikos*? On the one hand, no inscribed laws of this sort survive from other Greek communities, and thus the Gortynian legislation appears to be unique. Indeed, some scholars have taken the absence of such material elsewhere as a sign of Gortyn's peculiarity.⁷⁹ Other evidence, however, should force us to temper our enthusiasm for such sweeping solutions. First of all, a passage of Herodotus seems to imply that unions between slaves and free persons were nothing unusual in the Greek world. He claims (1.173) that the Lycians are strange insofar as they describe their lineage in relation to their female ancestors, and that the child of a union between a citizen woman and a slave was born free and legitimate, whereas the child of a male citizen and a foreign woman or concubine was deemed illegitimate. Apparently, the notion that free and slave might have children did not in itself cause Herodotus to raise his eyebrows. More telling is a passage in Plato's *Laws* (11. 930d–e):

Whenever there is agreement regarding parentage of a child, but there is need for a judgement as to which parent it should follow, **if a female slave has intercourse with a male slave or a free man or a manumitted slave, the offspring of the female slave shall wholly belong to her master; if a free woman has intercourse with a male slave, the child shall belong to the male slave's master.** If someone has a child with their own female or male slave, and the fact should be conspicuously clear, the officials for women shall send the child of the woman out of the country along with the father; and the *Nomophylakes* shall send away the man's child along with its mother.

If Gortyn's laws on servile unions between slaves of different owners or even between slaves and free persons were so unusual (or even *sui generis*), we must conclude that Plato had read the Gortyn Code himself. That would indeed be remarkable. But it is far more likely that he was creating an imaginary rule designed to discourage a widespread (and in his eyes deplorable) practice: unions between free persons and slaves, and from

78 See D.M. Lewis, 'The market for slaves in the fifth and fourth century Aegean: Achaemenid Anatolia as a case study' in E.M. Harris, D.M. Lewis & M. Woolmer (edd.) *Markets, Households and City-States in the Ancient Greek Economy* (CUP, forthcoming).

79 See note 31 above.

what we can see in this passage as apparently particularly inappropriate, sexual relations between people and their own slaves.⁸⁰ Sexual interaction across status boundaries is very much what we find in 19th century America, and exactly what we find described in the Gortyn Code; and we have already seen that Near Eastern societies contemporary to 5th century Gortyn faced similar problems due to the existence of complex servile unions.⁸¹ However, a note of caution is due when we consider ‘marriages’ between slaves and free persons. We too often associate the term ‘free’ with ‘elite’, but it is hardly likely that in either Gortyn or Athens slaves ever ‘married’ members of the upper classes. Far more plausible is interaction with the lower orders, and in particular with manumitted slaves. Manumitted slaves are the least likely sector of society to feel reluctant about marrying slaves, and the most likely to have social contact with them; in Gortyn, they seem to have dwelt in a specific place called Latosion (IC IV 78).⁸² It seems reasonable that if we wish to speculate on the circumstances wherein unions between slaves and free persons in Gortyn might have arisen, social interactions in Latosion represent the most likely place to start looking.

Conclusions

Gortyn’s rules on slave marriages have long been viewed as a peculiarity in the history of Greek slavery. However, a more careful look at the individual provisions, evaluated against a comparative overview of parallel institutions in other slave systems, shows something quite different. These rules did not grant or acknowledge rights for slaves, but were chiefly aimed at clarifying the property rights of free citizens in complex scenarios where disputes over ‘who owns what’ might have led to conflict and litigation. In many ways, these rules display solutions to the sort of problems that existed in other slave systems elsewhere in the eastern Mediterranean world. That is not to say that Gortynian slavery was similar to slavery in Athens: in social and organisational terms, the two systems were completely different, and even legally speaking, slave status in Gortyn was tailored to its local conditions in a way that made it quite distinct from its Attic counterpart. For instance, the testimony of slaves in Gortyn could prevail over that of free persons (IC IV 72 II 15–16), whereas Athenian slaves were generally not permitted to bear witness without having been tortured. That should not, however, obscure the fact

80 See G. Morrow, *Plato’s Law of Slavery in its Relation to Greek Law* (Urbana, 1939) 94. Plato would have been ashamed of his student Aristotle, if we can credit the story that the latter had a child by one of his slaves (Timaeus *FGrHist* 566 F 157).

81 See note 45 above. The Near Eastern examples in this note raise another possible way of dealing with such unions, that is, by private agreement in a case-by-case fashion rather than by public law. Such agreements would not be committed to durable media like stone, and this perhaps explains the apparent uniqueness of Gortyn.

82 See R.F. Willetts, ‘Freedmen at Gortyna’ *CQ* n.s. 4.3 (1954) 216–19; Chaniotis (n. 26) 188 n. 63 with references, defending the normal restoration τὸν ἀπελευ[θέρων]. For foreigners, see (n. 15) 162.

that we are dealing with the same basic legal status in both regions: slaves, owned by their masters and lacking legal rights, not serfs with various enforceable legal privileges.

Looking beyond legal issues to the social background of slavery, a comparative perspective allows us to see the institution of slave marriage as a rational and advantageous strategy from the point of view of the slaveholding classes, that is, once it is seen as part of a system of control which depended upon a mixture of incentives and sanctions to keep slaves in line, and as a necessary strategy to maintain a numerically robust workforce. Yet there is every likelihood that the institution of servile marriage, of which we catch glimpses in Gortyn's laws, was shaped by a dynamic interaction between masters and slaves, and was not simply imposed from above upon a passive workforce. Nonetheless, we find reflected in the sphere of law the interests of slaveowners alone. Gortyn's laws dealing with slave marriages are, in a sense, a matter of rights, but rights for slaveowners, not slaves.

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